

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2317 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHUPAT @ BHUSHAN MOHANBHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/06/2000

ORAL JUDGEMENT

#. Heard learned counsel Ms.Banna Datta for the
petitioner and learned AGP Mr.S.J.Dave, for the
respondent - State.

#. The detention order dated 4.12.1999 passed by the
respondent No.2 - Commissioner of Police, Rajkot City,

against the petitioner in exercise of powers conferred under section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed through jail.

#. The present petitioner - detenu has sent the present petition through jail authority and on receiving the same, office has registered the same as Special Civil Application and put it before the court on 3/4/2000 and the following order has been passed.

"Rule. Mr.K.T.Dave, Ld.AGP waives service of rule. To be placed for final hearing in chronology of date of order of detention."

Thereafter, the matter has come up before this court for final hearing today. On behalf of the State, learned AGP Mr.S.J.Dave is present, whereas the petitioner - detenu has not engaged any lawyer. Looking to the facts and circumstances of the case, I have requested the learned advocate Ms.Banna Datta to represent as amicus curiae and she has willingly accepted my request.

#. After going through the record, Ms.Datta has mainly argued that, whole exercise has been done by the authority within one day i.e. 4.12.1999 and the authority has passed the order without hearing the detenu and without verifying the statements and record. For that she has relied upon the judgment reported in 1993(2) GLR 1659 wherein it is held that "there is a provision under section 9(2) carved out on the basis of Art. 22(5) of the Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinbefore, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9(2), as the proposal was made on 16.10.1992 and the order of detention was passed on the following day, i.e. 17th October, 1992,

nor is there any material to show as to how he examined the necessity of exercising the power under section 9(2). Under the circumstances, in our view, it is a wrong exercise of power under section 9(2) which has affected the detenu's right of making an effective representation under Art. 22(5) of the Constitution of India and therefore, the continued detention of the detenu is bad and illegal and the impugned detention order is required to be quashed and aside."

#. Here in this case also, the detaining authority has exercised the powers under section 9(2) of the PASA Act. The proposal was made on 4.12.1999 and the order of detention was passed on the same day. But, as per the statements of witness nos.1 and 2 which do not bear the date on which he has verified the statements. So, in absence of any other satisfactory evidence on record, this court cannot come to the conclusion that, verification has been done by the authority on the same day, and therefore, question remains open that on which date, he has verified the statements and more particularly, he has not filed the affidavit to that effect. Under the circumstances, in my view, it is wrong exercise of powers under section 9(2) which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution of India.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. In the facts and circumstances of the case, the continued detention of the detenu is bad and illegal and the impugned detention order is required to be quashed and set aside.

#. In the result, the petition is allowed. The impugned order of detention dated 4.12.1999 passed by the respondent No.2 against the petitioner is hereby quashed and set aside. The petitioner - detenu - Bhupat Bhushan Mohanbhai Chavda is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

(R.P.Dholakia, J.)
(pathan)